

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TIME INC., HEARST CORPORATION, ADVANCE	:
MAGAZINE PUBLISHERS INC., AMERICAN	:
MEDIA, INC., HACHETTE FILIPACCHI MEDIA	:
U.S., INC., THE MCGRAW-HILL COMPANIES,	:
INC., NEWSWEEK, INC., SOURCE INTERLINK	:
MAGAZINES, LLC, REED BUSINESS	:
INFORMATION, A DIVISION OF REED	:
ELSEVIER INC., VARIETY, INC., REED	:
ELSEVIER PROPERTIES INC., BONNIER	:
CORPORATION, ZIFF DAVIS PUBLISHING	:
HOLDINGS INC., FORBES LLC, REIMAN MEDIA	:
GROUP, INC., RD LARGE EDITION, INC., HOME	:
SERVICE PUBLICATIONS, INC. and READER'S	:
DIGEST LATINOAMERICA SA,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
DARREN ANDREW BUDD, SALVEO LIMITED,	:
CYBERNET COMMUNICATIONS, INC.,	:
SWITCHWORKS TECHNOLOGIES, INC.;	:
HAMIDULLA GHUMAL ABBAS, YOAV	:
SCHWARTZ, RICK ROSS and JOHN DOES 1-20,	:
	:
Defendants.	:
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**DECLARATION OF LACY H. KOONCE, III  
IN SUPPORT OF PLAINTIFFS' APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, LACY H. KOONCE, III, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the firm of DAVIS WRIGHT TREMAINE LLP, counsel to plaintiffs in the within infringement action. I am an attorney licensed to practice before the Courts of the State of New York and admitted to the Bar of this Court. I am fully familiar with the facts stated herein. I submit this declaration in support of plaintiffs' application by order to show cause for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd, Salveo Limited, Cybernet Communications, Inc.

(“Cybernet”), Switchworks Technologies, Inc. (“Switchworks”), Hamidulla Ghumal Abbas, Yoav Schwartz, Rick Ross and John Does 1-20 (collectively, “defendants”) from infringing plaintiffs’ copyrights, trademarks and trade dress in connection with a website located at www.mygazines.com (the “Infringing Website”).

2. I submit this declaration to set forth the organizational structure of the papers being submitted in support of plaintiffs’ application, to set forth the steps we have taken to provide notice to defendants of plaintiffs’ application, and to place certain additional information before the Court not provided in the accompanying declarations.

***Plaintiffs’ Papers in Support of the Motion***

3. Plaintiffs’ papers submitted on the motion are as follows:

- **Memorandum of Law.**
- **Complaint.** Annexed to the Complaint are schedules listing, *inter alia*, all of the issues of plaintiffs’ magazines that are available on the Infringing Website, plaintiffs’ copyright registrations, pending copyright applications for those magazine issues where applicable, plaintiffs’ trademarks and trademark registrations, and the dates on which plaintiffs sent cease and desist letters and/or take-down notices to defendants.
- **Andrew Blau Declaration.** Mr. Blau is the declarant for plaintiff Time Inc., and his declaration sets forth the primary factual background for this application, including the discovery of the Infringing Website, the manner in which the Website infringes, the efforts of defendants to hide their identities and their activities and plaintiffs’ efforts to find them, Time Inc.’s demand letters and take-down notices to the Infringing Website and its web hosts (and their responses), and defendants’ advertising and promotion of the Website.
- **Barry Kuang Pai-Chun Declaration.** Mr. Pai-Chun is a computer forensics investigator who has analyzed the Infringing Website on behalf of plaintiffs, and his declaration sets forth the results of his analysis, including the apparent involvement of several of the individual defendants in the creation of the Website.
- **Declarations of Publishers.** These declarations set forth each publishers’ copyright registrations and applications for the magazines that appear on

the Infringing Website; their trademarka and trademark registrations; their efforts to contact the owners of the Infringing Website and its web hosts; and the harm that the Infringing Website is causing to that publisher:

- Declaration of Michael J. Antonello (American Media)
- Declaration of Jeremy Thompson (Bonnier)
- Declaration of John Bellando (Advance Magazine Publishers)
- Declaration of Kai Falkenberg (Forbes)
- Declaration of Debra S. Weaver (Hearst)
- Declaration of Adriaan Bouten (McGraw-Hill)
- Declaration of Randy L. Shapiro (Newsweek)
- Declaration of Mark K. Sirota (Readers Digest)
- Declaration of Jeremy Pomeroy (Reed)
- Declaration of Renee Simonton (Reed)
- Declaration of Scott J. Spooner (Source Interlink)
- Declaration of Paul A. Lee (Time Inc.)
- Declaration of Shirini Malkani (Ziff Davis)

***Our Efforts to Provide Notice to Defendants of This Motion***

4. Today at approximately 3:30 p.m. I personally began attempting to contact each of the defendants to provide notice that we would appear today before this Court on plaintiffs' application. I gave notice by making telephone calls to the following defendants, followed by emails and faxes as appropriate, with the following results:

- **Darren Andrew Budd.** I placed a telephone call to a number listed in the Toronto telephone directory under "D. Budd" that corresponds with the physical address given by Mr. Budd in his trademark applications. Although I reached voicemail for an individual I believe to be Mr. Budd, the voice-mailbox was full and would not allow me to leave a message. I then emailed Mr. Budd at two addresses, [dbudd69@hotmail.com](mailto:dbudd69@hotmail.com) and [darrenbudd@rogers.com](mailto:darrenbudd@rogers.com), that Mr. Budd has used in connection with registering certain domain names. A copy of the email sent to Mr. Budd (and other defendants) is annexed hereto as Exhibit A. The email to the [darrenbudd@rogers.com](mailto:darrenbudd@rogers.com) address was returned undeliverable, but the other email appears to have been delivered.
- **Salveo Limited.** I placed a telephone call to a number listed in the WHOIS information for the mygazines.com domain name. The phone rang for several minutes without anyone answering, and so I was unable to leave a message. I then emailed Salveo Limited at the email address listed in the WHOIS information, and also at the address [salveoltd@gmail.com](mailto:salveoltd@gmail.com), which is the return address on emails sent to some of our clients in

response to their demand letters. *See* Exhibit A. Finally, I sent an email to [jsmith@mygazines.com](mailto:jsmith@mygazines.com), which is an address the owner of the Mygazines.com website has used to communicate with the press. A copy of my email to [jsmith@mygazines.com](mailto:jsmith@mygazines.com) is annexed hereto as Exhibit B.

- **Rick Ross.** I placed a telephone call to the primary telephone number for defendant Switchworks, and reached an automatic answering system that stated that I had reached “Switchworks-Cybernet”. I was given the option of using the company telephone directory, and dialed Mr. Ross’ extension. I reached Mr. Ross’ voicemail and left a message giving him notice that we are naming him, Cybernet and Switchworks as defendants, that we are filing an application for a temporary restraining order in this Court on the morning of August 21, 2008, and that if he retains counsel, such counsel should contact me directly for more details. I followed up that telephone call with an email to [rross@whip.ca](mailto:rross@whip.ca), which is an address that Mr. Ross used to respond to a demand letter from one of our clients, and to [rross@switchworks.com](mailto:rross@switchworks.com), which is an address I located online. A copy of my emails to Mr. Ross are annexed hereto as Exhibit C.
- **Cybernet Communications, Inc.** *See* above regarding my telephone call to Mr. Ross. I followed up that telephone call with an email to [icheval@mycybernet.net](mailto:icheval@mycybernet.net), an address used by Cybernet in connection with responses to a demand letter from one of our clients, and to [mycybernet.net@contactprivacy.com](mailto:mycybernet.net@contactprivacy.com), an address listed in one of Cybernet’s domain name registrations. *See* Exhibit A. I received a response to the latter email with direction on how to send a message to the domain name registrant at the [www.contactprivacy.com](http://www.contactprivacy.com) website, and I followed those instructions and re-sent the message. A copy of that message is annexed hereto as Exhibit D. Finally, I also sent a fax to Cybernet providing the same information I provided on Mr. Ross’ voice mail. A copy of that fax is annexed hereto as Exhibit E.
- **Switchworks Technologies, Inc.** *See* above regarding my telephone call to Mr. Ross. I followed up that telephone call with an email to [info@switchworks.com](mailto:info@switchworks.com) and [adlaing@switchworks.com](mailto:adlaing@switchworks.com), an address used by Cybernet in connection with responses to a demand letter from one of our clients, and to [switchworks.com@contactprivacy.com](mailto:switchworks.com@contactprivacy.com), an address listed in one of Cybernet’s domain name registrations. *See* Exhibit A. I received a response to the latter email with direction on how to send a message to the domain name registrant at the [www.contactprivacy.com](http://www.contactprivacy.com) website, and I followed those instructions and re-sent the message. A copy of that message is annexed hereto as Exhibit F. Finally, I also sent a fax to Cybernet providing the same information I provided on Mr. Ross’ voice mail. *See* Exhibit E.
- **Hamidulla Ghumal Abbas.** I placed a telephone call to Mr. Abbas at a

telephone number listed for his business, Power Computing. I spoke to Mr. Abbas and gave him notice that we are naming him personally as a defendant, that we are filing an application for a temporary restraining order in this Court on the morning of August 21, 2008, and that if he retains counsel, such counsel should contact me directly for more details. I followed up this telephone call with an email to [hamidskey@yahoo.ca](mailto:hamidskey@yahoo.ca), [habbas@powercomputer.ca](mailto:habbas@powercomputer.ca), and [info@powercomputer.ca](mailto:info@powercomputer.ca), three email addresses associated with Mr. Abbas. A copy of my email to Mr. Abbas is annexed hereto as Exhibit G.

- **Yoav Schwartz.** I placed a telephone call to Mr. Schwartz at a telephone number listed in a domain name registration for his business, YMS Dynamics. I reached a flooring business, and was told that Mr. Schwartz no longer worked at that company. I then sent an email to an email address associated with his business, [yoav@ymsdynamics.com](mailto:yoav@ymsdynamics.com), and to [yostar@gmail.com](mailto:yostar@gmail.com), another email associated with Mr. Schwartz. A copy of my email to Mr. Schwartz is annexed hereto as Exhibit H.

### ***Additional Information***

5. I have performed a search on the Infringing Website for a user named “Hamidskey”, based on information suggesting that this appears to be an alias of defendant Hamidulla Ghumal Abbas. Based on the results of that search, and upon information and belief, Abbas has created at least 13 “mygazines” on the Infringing Website.

6. I have also performed a search on the Infringing Website for a user named “yms”, based on information suggesting that this appears to be an alias of defendant Yoav Schwartz. Based on the results of that search, and upon information and belief, Schwartz has created at least 14 “mygazines” on the Infringing Website.

### ***Proceedings in Canada***

7. The U.S. publishers who are plaintiffs in this action are also part of a larger group of plaintiffs bringing a separate action in the Superior Court of Justice in Ontario, Canada under the Canadian copyright and trademark laws, against the same defendants named in the above-captioned action. I am advised by counsel to those plaintiffs that proceedings will be initiated in

the court in Ontario on August 21, 2008 (the "Canadian Action").

8. I am advised that Friday, August 22, 2008, the plaintiffs in the Canadian Action will attempt to provide notice to the defendants of the initiation of that action.

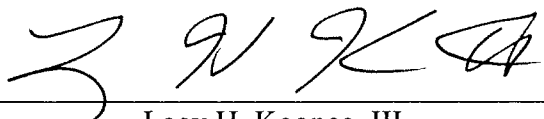
9. I am further advised the procedure in the Superior Court of Justice will require counsel for the plaintiffs in the Canadian Action to appear in court on Monday, August 25, 2008 to request a date for a hearing on the plaintiffs' motion for an interlocutory injunction, which will likely occur in early September.

10. I am further advised that the plaintiffs in the Canadian Action will be seeking injunctive relief enjoining and restraining the defendants in that action from taking further actions that infringe the plaintiffs' rights under the Canadian Copyright Act.

***No Prior Relief***

11. No prior application for the relief requested herein has been made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 20, 2008.

  
\_\_\_\_\_  
Lacy H. Koonce, III

# EXHIBIT A

**Koonce, Lance**

**From:** Koonce, Lance  
**Sent:** Wednesday, August 20, 2008 4:17 PM  
**To:** darrenbudd@rogers.com; dbudd69@hotmail.com; bfe208793ab0c712897e0aba7fdd8296-839400@contact.gandi.net; icheval@mycybernet.net; mycybernet.net@contactprivacy.com; sales@switchworks.com; info@switchworks.com; adlaing@switchworks.com; switchworks.com@contactprivacy.com; salveoltd@gmail.com; abuse@mygazines.com; feedback@mygazines.com  
**Subject:** URGENT NOTICE: Mygazines.com

To: Darren Andrew Budd  
Cybernet Communications, Inc.  
Switchworks Technologies, Inc.  
Salveo Limited  
Yoav Schwartz

I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

We will be making an application tomorrow morning in the United States District Court for the Southern District of New York for a temporary restraining order in connection with the website known as Mygazines.com. As you are being named as a defendant in this action, we are required to provide you with this notice so that you can consult with legal counsel and have them appear tomorrow if you intend to oppose our application.

If you have an attorney or intend to retain one, please have them contact me directly so that I can provide him or her with further details.

We will be presenting our application to the court tomorrow morning at 10:00 am at the clerk's office at 500 Pearl Street in New York, NY (Manhattan).

**Lance Koonce | Davis Wright Tremaine LLP**

1633 Broadway, 27th Floor | New York, NY 10019  
Tel: (212) 603-6467 | Fax: (212) 489-8340  
Email: [lancekoonce@dwt.com](mailto:lancekoonce@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)  
Bio: [www.dwt.com/lawdir/attorneys/KoonceLance.cfm](http://www.dwt.com/lawdir/attorneys/KoonceLance.cfm)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.



## EXHIBIT B

**Koonce, Lance**

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**From:** Koonce, Lance  
**Sent:** Wednesday, August 20, 2008 6:42 PM  
**To:** 'jsmith@mygazines.com'  
**Subject:** FW: URGENT NOTICE re Mygazines.com

I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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Tel: (212) 603-6467 | Fax: (212) 489-8340  
Email: [lancekoonce@dwt.com](mailto:lancekoonce@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)  
Bio: [www.dwt.com/lawdir/attorneys/KoonceLance.cfm](http://www.dwt.com/lawdir/attorneys/KoonceLance.cfm)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

## EXHIBIT C

**Koonce, Lance**

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**From:** Koonce, Lance  
**Sent:** Wednesday, August 20, 2008 4:28 PM  
**To:** 'rross@whip.ca'; 'rross@switchworks.com'  
**Subject:** URGENT NOTICE re Mygazines.com

To: Rick Ross

I am writing to follow up on my earlier telephone message, on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

As I stated earlier, we will be making an application tomorrow morning in the United States District Court for the Southern District of New York for a temporary restraining order in connection with the website known as Mygazines.com. As you are being named as a defendant in this action, we are required to provide you with this notice so that you can consult with legal counsel and have them appear tomorrow if you intend to oppose our application.

Again, if you have an attorney or intend to retain one, please have them contact me directly so that I can provide him or her with further details.

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Email: [lancekoonce@dwt.com](mailto:lancekoonce@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)  
Bio: [www.dwt.com/lawdir/attorneys/KoonceLance.cfm](http://www.dwt.com/lawdir/attorneys/KoonceLance.cfm)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

## EXHIBIT D

**Send Message to the Domain's Contact [mycybernet.net]****Contact \*** All**From (Email Address)** lancekoonce@dwt.com**Subject** URGENT NOTICE re: Mygazines.com**Message** To: Cybernet Communications, Inc. ^

I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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Submit

\* **All:** Sends a message to all of the contacts listed in the WHOIS record of the domain.

**Admin:** Will send a message to the Administrative contact for the domain.

**Billing:** Sends a message to the Billing Contact for the domain

**Owner:** Sends a message to the Registrant of the domain

**Technical:** Will send a message to the Technical Contact for the domain

## EXHIBIT E

To: Cybernet Communications, Inc. (Fax: 905-947-1802)  
Switchworks Technologies, Inc. (Fax: 416-531-3441)

I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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If you have an attorney or intend to retain one, please have them contact me directly so that I can provide him or her with further details.

We will be presenting our application to the court tomorrow morning at 10:00 am at the clerk's office at 500 Pearl Street in New York, NY (Manhattan).

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Tel: (212) 603-6467 | Fax: (212) 489-8340  
Email: [lancekoonce@dwt.com](mailto:lancekoonce@dwt.com) | Website: [www.dwt.com](http://www.dwt.com)



## EXHIBIT F

**Send Message to the Domain's Contact [switchworks.com]****Contact \*** All**From (Email Address)** lancekoonce@dwt.com**Subject** URGENT NOTICE re: Mygazines.com

**Message** I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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**Billing:** Sends a message to the Billing Contact for the domain

**Owner:** Sends a message to the Registrant of the domain

**Technical:** Will send a message to the Technical Contact for the domain

## EXHIBIT G

**Koonce, Lance**

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**From:** Koonce, Lance  
**Sent:** Wednesday, August 20, 2008 4:27 PM  
**To:** 'hamidskey@yahoo.ca'; 'info@powercomputer.ca'; 'habbas@powercomputer.ca'  
**Subject:** URGENT NOTICE re Mygazines.com

To: Hamidulla Ghumal Abbas

I am writing to follow up on our earlier telephone conversation, on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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Bio: [www.dwt.com/lawdir/attorneys/KoonceLance.cfm](http://www.dwt.com/lawdir/attorneys/KoonceLance.cfm)

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

## EXHIBIT H

**Koonce, Lance**

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**From:** Koonce, Lance  
**Sent:** Wednesday, August 20, 2008 4:31 PM  
**To:** 'yostar@gmail.com'; 'yoav@ymsdynamics.com'  
**Subject:** URGENT NOTICE re Mygazines.com

To: Yoav Schwartz

I am writing on behalf of our clients Time Inc., Hearst Corporation, Advance Magazine Publishers Inc. d/b/a Condé Nast Publications, American Media, Inc., Hachette Filipacchi Media U.S., Inc., The McGraw-Hill Companies, Inc., Newsweek, Inc., Source Interlink Magazines, LLC, Reed Business Information, a division of Reed Elsevier Inc., Variety, Inc., Reed Elsevier Properties Inc., Bonnier Corporation, Ziff Davis Publishing Holdings Inc., Forbes LLC, Reiman Media Group, Inc., RD Large Edition, Inc., Home Service Publications, Inc. and Reader's Digest Latinoamerica SA.

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Bio: [www.dwt.com/lawdir/attorneys/KoonceLance.cfm](http://www.dwt.com/lawdir/attorneys/KoonceLance.cfm)

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